

§103(a) over Souissi et. al. in view of O'Neal et. al.<sup>1</sup> However, claims 10 and 11 depend from allowed independent claim 3. Applicant therefore assumes that claims 10 and 11 are also allowed, and as such, considers further discussion with respect to dependent claims 10 and 11 moot.

### **35 U.S.C. §102(e) Rejections**

#### **Claims 8 and 49**

The Examiner rejected claim 8 under §102(e) as being anticipated by Souissi. However, the Examiner's basis for this rejection is confusing, as Applicant has already successfully responded to a §102(e) rejection over Souissi.<sup>2</sup>

Claim 8 explicitly requires performing channel quality measurements "wherein said frequency of performing said channel quality measurements is a function of the length of time said mobile station remains in said position" (emphasis added). It is interesting to note that Applicant's Response to the original §102(e) rejection over Souissi resulted in both a new rejection in a subsequent Non-Final Office Action dated June 4, 2002, as well as an explicit admission by the Examiner that Souissi did not teach every limitation of claim 8. Specifically, the Examiner explicitly admitted that, "Souissi et al does not specifically teach channel quality measurements is a function of time. Souissi et al teach the processing system 206 preferably computes 612 a rate of change of the distance with respect to time."<sup>3</sup> Why, then, does the current Office Action once

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<sup>1</sup> This may be the result of an inadvertent cut-and-paste error. The wording of the paragraph supporting the Examiner's rejection in the current Office Action appears word-for-word on page 6 of the Office Action dated March 15, 2002, and on pp. 8 and 9 of the Office Action dated June 4, 2002.

<sup>2</sup> See the Office Action dated March 15, 2002, and Applicants Response dated April 11, 2002.

<sup>3</sup> See page 3, line 21 – page 4, line 2 of the Office Action dated June 4, 2002 (emphasis added).

again reject claim 8 under 35 U.S.C. §102(e) as being anticipated by Souissi? Claim 8 explicitly requires exactly what the Examiner admits that Souissi does not teach in the June 4, 2002 Office Action.

Applicant readily agrees with the Examiner that the Souissi reference does not teach "performing said channel quality measurements is a function of the length of time." Applicant draws the Examiner's attention to page 2 of the current Office Action. To support the §102(e) rejection, the Examiner asserts that Souissi teaches, "determining a position of said mobile station," and "periodically performing channel quality measurements...wherein the frequency of performing said channel quality measurements is a function of said position of said mobile station." However, the current Office Action, like Souissi, is conspicuously devoid of any assertion that Souissi teaches, "performing said channel quality measurements is a function of the length of time said mobile station remains in said position," let alone support for such an assertion.

As stated in Applicant's previous Responses, claim 8 covers an embodiment where, for example, the frequency of performing channel quality measurements decreases in proportion to the length of time a mobile remains stationary (i.e., not moving). While Souissi may vary the scan rate of the mobile according to its distance while moving, Souissi does not disclose varying the frequency of the scan rate as a function of the length of time the mobile station remains in one position. In contrast, Souissi determines the scan rate only if the mobile station is moving towards the target system. In fact, column 6 of Souissi, lines 54-57, reveals that the processing system "...then checks 614 whether the rate of change is negative (distance getting smaller). If not, the flow returns to step 602." Indeed, a close inspection of Figure 6 makes clear that the mobile station will bypass scanning (block 616) if the rate of change in the distance is zero (i.e., the mobile is stationary).

Thus, it appears that both the Examiner and the Applicant readily agree that Souissi fails to disclose varying the frequency of performing channel quality measurements as a function of the length of time the mobile station remains in one position. Even the current Office Action does not assert that Souissi teaches every limitation of claim 8. As such, Souissi cannot possibly anticipate claim 8 under §102(e). Accordingly, Applicant respectfully requests the allowance of claim 8, and its dependent claims 2 and 9.

Likewise, independent claim 49 requires performing a periodic task “wherein said frequency of performing said periodic task is a function of the length of time said mobile station remains in said position.” For the reasons stated above with respect to claim 8, Souissi fails to teach this element of claim 49. Accordingly, Applicant respectfully requests the allowance of independent claim 49, and its dependent claim 45.

### **Claims 15 and 38**

Claim 15 explicitly requires periodically updating the position of a mobile station “...wherein the frequency of said updating is a function of said position of said mobile station.” However, the current rejection of claim 15 under §102(e) as being anticipated by Souissi is just as confusing as the rejection to claim 8. As above, this rejection originally appeared in the Office Action dated March 11, 2002, to which Applicant filed a timely Response.<sup>4</sup> The Examiner withdrew the §102(e) rejection, admitting that Souissi failed to teach every limitation of claim 15. In particular, on page 5 of the Office Action, dated June 4, 2002, lines 6-7; the Examiner specifically states, “Souissi et al do not specifically teach in detail as Menich et al explain.” The Examiner is, at least, partially

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<sup>4</sup> See Applicant's Response dated April 11, 2002, and the subsequent Office Action dated June 4, 2002.

correct. Not only does Souissi not “specifically teach in detail” the subject matter of claim 15, Souissi fails to teach it at all.

Souissi periodically updates position information, but does not teach varying the frequency of the updates (i.e., changing the time period between successive updates) as a function of the position of the mobile station. In sharp contrast, Souissi teaches a uniform frequency of updating (i.e. a constant period of time between successive updates) as a function of elapsed time, which is exactly the opposite of claim 15.

Column 6 of Souissi, lines 42-45, reveals that the “processing system 206 then checks 608 whether it is time to make another estimate of the location. (Measurements preferably are made at a predetermined rate, e.g., every minute)” (emphasis added). Uniform updates, preordained to occur at predetermined time intervals, do not teach, or even suggest, the requirements of claim 15. In fact, Souissi fails to vary the frequency of the updates altogether. Thus, even without the Examiner’s admission, the §102(e) rejection over Souissi is improper, and claim 15 defines patentable subject matter over the cited art. Accordingly, Applicant respectfully requests the allowance of claim 15, as well as its dependent claims 16-26.

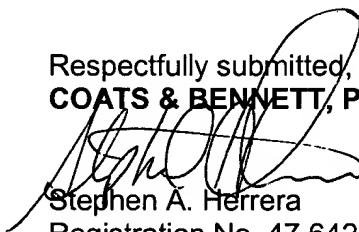
Regarding independent claim 38, it requires control logic for controlling the transceiver and the positioning receiver “...wherein said control logic varies the frequency of determining said position of said mobile station as a function of said position.” For logic similar to that of independent claim 15, Souissi fails to teach control logic that varies the frequency of determining the location of a mobile as a function of the mobile position. Therefore, Souissi fails to show this limitation, and cannot anticipate claim 38 under §102(e). Accordingly, Applicant respectfully requests the allowance of claim 38, as well as its dependent claims 39-43.

**35 U.S.C. §103(a) Rejections**

Despite Applicant's previous Responses, the Examiner maintains the rejection to dependent claims 24 and 25 under 35 U.S.C. §103(a) as being unpatentable over Souissi in view of O'Neal. Claims 24 and 25 depend from independent claim 15. As stated above, Souissi fails teach or suggest the subject matter of claim 15 and as such, fails to teach or suggest the subject matter of claims 24 and 25. Further, O'Neal does nothing to remedy the deficiencies of Souissi. Therefore, neither Souissi nor O'Neal, alone or in combination, teach or suggest claims 24 and 25. Accordingly, Applicant respectfully requests the allowance of claims 24 and 25.

Respectfully submitted,  
**COATS & BENNETT, P.L.L.C.**

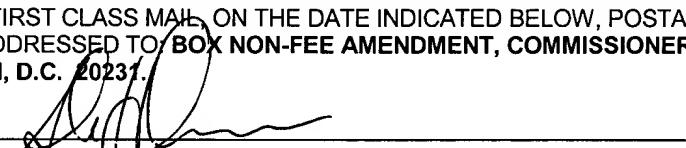
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